

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Lowe's Revised redevelopment Grant Agreement

DEPARTMENT: Economic Development

DIVISION: Community Redevelopment Agency

AUTHORIZED BY: William McDermott

CONTACT: John Metsopoulos

EXT: 7133

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute the US 17-92 CRA Redevelopment Grant Agreement between the CRA and Lowe's Home Centers, Inc.

District 4 Carlton D. Henley

John Metsopoulos

BACKGROUND:

On January 23, 2007 the 17-92 CRA awarded Lowe's a \$225,000 Grant for the redevelopment of the former K-Mart site.

Staff has revised the Redevelopment Grant Agreement with Lowe's Home Centers to provide enhanced landscaping and site improvements as outlined in Exhibit B and is presenting the revised agreement to the Board of County Commission for approval.

STAFF RECOMMENDATION:

Staff recommends the Board approve and authorize the Chairman to execute the US 17-92 CRA Redevelopment Grant Agreement between the CRA and Lowe's Home Centers, Inc.

ATTACHMENTS:

1. Agreement
2. County Attorney's Office Memorandum
3. Lowe's Agreement Exhibit B
4. Lowe's Landscaping Upgrades

Additionally Reviewed By:

☒ County Attorney Review (Ann Colby, Arnold Schneider)

**US 17-92 CRA REDEVELOPMENT GRANT AGREEMENT
LOWES HOME CENTER - FERN PARK**

THIS AGREEMENT is effective this ____ day of _____, 20____, by and between the **US 17-92 COMMUNITY REDEVELOPMENT AGENCY**, a public agency created by Resolution No. 97-R-130, pursuant to Florida Statutes 165.031, 163.356, and 163.357, of and in the State of Florida, whose address is 1101 East First Street, Sanford, Florida 32771 (hereinafter referred to as the "CRA") and **LOWE'S HOME CENTERS, INC.**, authorized and doing business in the State of Florida, whose address is 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697, and whose Employer ID Number is 56-0748358 (hereinafter referred to as the "COMPANY").

W I T N E S S E T H

WHEREAS, the Board of County Commissioners of Seminole County, Florida (the "BOARD") has established the CRA in accordance with the Community Redevelopment Act of 1969, Chapter 163, Part III, Florida Statutes, in recognition of the need to address, prevent, and eliminate blighted conditions within the community; and

WHEREAS, the BOARD enacted Ordinance Number 97-54 adopting the US 17-92 Corridor Redevelopment Plan (the "Plan") for the purposes of community redevelopment within the US 17-92 Community Redevelopment Area (the "Area"); and

WHEREAS, the CRA is authorized to undertake and carry out community redevelopment projects and related activities in accordance with Florida Statutes, Section 163.370; and

WHEREAS, the CRA has identified the need to eliminate blight conditions, increase commercial activity, improve pedestrian safety, and provide job opportunities for area residents in the Plan; and

WHEREAS, the US 17-92 Redevelopment Planning Agency (the "RPA") is empowered to review redevelopment projects, programs, and opportunities and provide recommendations to the CRA as authorized by the Multiparty Interlocal Agreement Establishing the US 17-92 Redevelopment Planning Agency; and


WHEREAS, the RPA has reviewed the proposal for commercial redevelopment of the shopping plaza located at 6735 South US Highway 17-92 in Fern Park and generally known as "Lowe's Home Center-Fern Park" and identified by the Development Review Division (the "Division" or the "County") of the Planning and Development Department of Seminole County, as Project No. 06-06000043 (the "Project"), presented by the COMPANY and found the Project consistent and complementary to the goals of the Plan; and

WHEREAS, the Project is consistent with the following strategies identified in the Plan:

(a) Promote and locate strategic land use activities of regional importance within the redevelopment area to capture emerging market opportunities while reinforcing the unique character of the community;

(b) Establish a partnership between the public sector and the private sector for the purpose of understanding the mutual benefits of proposed redevelopment projects; and

WHEREAS, on October 27, 2006, the RPA unanimously endorsed the Project and recommended the Project be forwarded to the CRA for approval; and

WHEREAS, the COMPANY is proposing as part of the Project to redevelop the former K-Mart shopping center located at 6735 South US Highway 17-92 (the "Property"), located in unincorporated Seminole County within the geographic boundaries of the Area, in accordance with the set of plans more particularly described in Exhibit A attached hereto and made a part hereof as approved by the Division on or about April 19, 2007 (collectively,  the "Project Plans"); and

WHEREAS, on January 23, 2007, the CRA authorized financial assistance from the 17-92 Redevelopment Trust Fund in the form of CRA Economic Redevelopment Grant Agreement to the COMPANY to assist the COMPANY in the Project by providing for enhanced landscaping and site improvement; and

WHEREAS, the CRA and the COMPANY desire to enter into this Agreement for the purpose of establishing additional assurances to the CRA that expenditures of the CRA related to the Project will produce a positive economic effect in the Area as a result of COMPANY's activities in the Area;

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

SECTION 1. RECITALS.

A. The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

B. The CRA finds and declares that it is in the public's best interest and serves a public purpose to award a CRA Economic Redevelopment Grant from the 17-92 Redevelopment Trust Fund to the COMPANY in the amount of TWO HUNDRED TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$225,000.00) (the "Award") pursuant to the terms of this Agreement.




SECTION 2. DEFINITIONS.

A. "Project" includes all development, renovation, construction, and redevelopment substantially in accordance with the Project Plans and as described in Exhibit B-Fern Park Public Purpose Investments. The Project is intended to be completed by December 31, 2008.

B. "Completion Thresholds". The Project shall be deemed completed when the County issues its certificate of completion for the Lowe's store thereon, and the Lowe's store opens for business to the public and when investment as described in Exhibit B is verified (collectively, the "Store Completion").

C. "Award Payout." Award payout for the Project shall be made only after the COMPANY has satisfied the Completion Thresholds for the Project within the prescribed time period referenced in Section 2.A. and Section 2.B. of this Agreement, and investment as described in Exhibit B is verified.

The Award Payout upon completion of the Project shall be TWO HUNDRED TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$225,000.00). This amount represents 100 percent of the total grant award of TWO HUNDRED TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$225,000.00).

D. "Allowable Costs" are any costs allowable by law associated with the redevelopment, renovation, and construction of the Project. Said costs may include site development costs, constructions costs, construction materials costs,  impact fees, permitting fees, and/or professional service fees associated with the Project.

SECTION 3. REPRESENTATIONS OF THE COMPANY. The COMPANY hereby represents and warrants to the CRA the following:


A. The COMPANY is duly organized and validly existing under the laws of the State of North Carolina and is authorized to do business in the State of Florida.

B. The COMPANY has the corporate power, authority, and legal right to execute, deliver, and perform this Agreement. The execution, delivery, and performance of this Agreement by the COMPANY have been duly authorized by all necessary corporate and shareholder action.

SECTION 4. COVENANTS OF THE COMPANY. The COMPANY hereby covenants with CRA to do the following:

A. The COMPANY agrees to redevelop the Property (the former K-Mart Shopping Center) located at 6735 South US Highway 17-92, Fern Park, Seminole County, Florida in accordance with the Project Plans and the permits issued by the County with respect thereto.

B. The COMPANY agrees to satisfy the terms as described in Section 2.B. of this Agreement before requesting disbursement of the Award.

SECTION 5. COVENANTS OF THE CRA. Once the Store Completion and investment as described in Exhibit B is verified, the CRA will cause to be issued a payment to the COMPANY for demonstrated and allowable costs incurred up to TWO HUNDRED  TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$225,000.00) for redevelopment costs.

SECTION 6. TERM. This Agreement shall become effective upon execution by the CRA and the COMPANY and shall remain in effect through close out of the Agreement pursuant to and consistent with its terms. This Agreement will terminate upon payment to the COMPANY of the Award.

SECTION 7. FORCE MAJEURE. In the event any party hereunder fails to satisfy a requirement imposed in a timely manner due to hurricane, flood, tornado, or other Act of God or force majeure, then said party shall not be in default hereunder; provided, however that performance shall recommence upon such event ceasing its effect.

SECTION 8. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors in interest, transferees, and assigns of the parties.

SECTION 9. ASSIGNMENT. This Agreement shall not be assigned by either party without the prior written approval of the other.

SECTION 10. NOTICES.

A. Whenever either party desires to give notice unto the other, notice may be sent to:

CRA:

US 17-92 Community Redevelopment Agency
County Services Building
1101 E. First Street
Sanford, FL 32771

With copies to:

Seminole CRA Economic Development Dept.
John Metsopolous, Coordinator
US 17-92 CRA
1055 AAA Drive, Suite 145
Heathrow, FL 32746

COMPANY:

Lowe's Home Centers, Inc.
Attn: Legal Real Estate Dept.
Mail Code LGS6
1605 Curtis Bridge Road
Wilkesboro, NC 28697


With copies to:

Lowe's Companies, Inc.
Attn: Property Management
REEC Dock (FMN6)
1605 Curtis Bridge Road
Wilkesboro, NC 28697

B. Either of the parties may change, by written notice as provided herein, the addresses of persons for receipt of notices or invoices. All notices shall be effective upon receipt.

SECTION 11. INDEMNITY AND INSURANCE.

A. Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof.

B. To the extent allowed by law, each party to this Agreement shall indemnify, save, and hold harmless the other party and all of its respective officers, agents, and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description whatsoever, including claims of property damage and claims for injury to or death of persons brought or recovered against the other party to this Agreement by reason of any act or omission of  the responsible party, its respective officers, agents, subcontractors, or employees in the execution of the work relating to this Agreement.

C. The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida, nor as a waiver of sovereign immunity of the CRA beyond the waiver provided for in Section 768.28, Florida Statutes.

D. The COMPANY shall provide necessary workers' compensation coverage and unemployment compensation for its employees.

SECTION 12. CONFLICT OF INTEREST.

A. The COMPANY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the CRA or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

B. The COMPANY hereby certifies that no officer, agent, or employee of the CRA has any material interest (as defined in Section 112.312, Florida Statutes), either directly or indirectly, in the business of the COMPANY to be conducted there, and that no such person shall have any such interest at any time during the term of this Agreement.

C. Pursuant to Section 216.347, Florida Statutes, the COMPANY hereby agrees that monies received from the CRA pursuant to this Agreement will not be used for the purpose of lobbying the legislature or any other state or federal agency.

D. The COMPANY agrees that it will comport all of its activities with the provisions of Chapter 760, Florida Statutes.

SECTION 13. COMPLIANCE WITH LAWS AND REGULATIONS. In performing under this Agreement, the parties shall abide by all laws, statutes, ordinances, rules, and regulations pertaining to or regulating the performance set forth herein, including those now in effect and hereafter adopted. Any material violation of said laws, statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle the non-violating party to

terminate this Agreement immediately upon delivery of written notice of termination to the violating party.

SECTION 14. EMPLOYEE/COMPANY STATUS.

A. Persons employed or retained by the COMPANY in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to the CRA's officers and employees either by operation of law or by the CRA.

B. The COMPANY assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments, and federal, state, and local employment taxes, if any, attributable to the COMPANY personnel or contractors and agrees to indemnify and hold the CRA harmless from any responsibility for same.


C. In performing this Agreement, planning, developing, constructing, equipping, and operating the Project or carrying out any of the activities to be carried out by the COMPANY, the COMPANY will be acting independently, in the capacity of an independent entity, and not as a joint venturer, partner, associate, employee, agent, or representative of the CRA.

SECTION 15. NO THIRD-PARTY BENEFICIARIES. This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns, including any successor in interest to the COMPANY's interest in the Project, and is not intended to and shall

not benefit any third party. No third party shall have any rights hereunder as a result of this Agreement or any right to enforce any provisions of this Agreement.

SECTION 16. CONTINGENT FEES/CONFLICTING EMPLOYMENT.

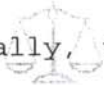
A. The COMPANY covenants that it has employed and retained only bona fide employees working for the COMPANY and attorneys and consultants to solicit or secure this Agreement. The CRA warrants that it has not paid or agreed to pay any person, the COMPANY, corporation, individual, or firm, other than a bona fide employee working for the COMPANY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award for making this Agreement.

B. The COMPANY agrees  at the time of execution of this Agreement it has no retainer or employment agreement, oral or written, with any third party relating to any matters which adversely affect any interest or position of the CRA. During the term of this Agreement, the COMPANY shall not accept any retainer or employment from a third party whose interests appear to be conflicting or inconsistent with those of the CRA.

SECTION 17. GOVERNING LAW/ATTORNEYS' FEES. This Agreement shall be construed and interpreted according to the laws of the State of Florida. In the event of litigation between the parties arising from or pertaining to this Agreement, the prevailing party shall be

entitled to recover from the other reasonable trial and appellate attorneys' fees and costs.

SECTION 18. CONSTRUCTION OF AGREEMENT. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties, CRA and the COMPANY, have contributed substantially and materially to the preparation hereof.

SECTION 19. CONSTITUTIONAL AND STATUTORY LIMITATION ON AUTHORITY OF THE CRA. The terms and conditions of this Agreement placed upon the CRA are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of the CRA. Specifically,  the parties acknowledge that the CRA is without authority to grant or pledge a security interest in any of the CRA's revenue sources or property.

SECTION 20. EVENTS OF DEFAULT/REMEDIES. For purposes of this Agreement, "Event of Default" shall mean any of the following:

A. The COMPANY shall misapply or cause the misapplication of CRA funds or credits received pursuant to this Agreement.

B. Any representation or warranty made by the COMPANY herein or in any statement, invoice, or certificate furnished to the CRA in connection with the performance of this Agreement that proves to be untrue in a material respect as of the date of issuance or making

thereof and not corrected or brought into compliance within thirty (30) days after written notice thereof to the COMPANY by the CRA.

C. The COMPANY shall materially breach any covenant contained in this Agreement and such breach shall not be corrected or cured within thirty (30) days after written notice thereof to the COMPANY by the CRA; provided, however, that the CRA may declare a lesser cure period in the event that it finds, in its sole and absolute discretion, that such lesser period is necessary to protect the public health, safety, or welfare.

D. If within forty-five (45) days after receiving written notice from the CRA that an Event of Default has occurred, the COMPANY shall refund such disbursed funds which the CRA determines have been misapplied under the terms of this Agreement, or, in the alternative, deposit such funds into the registry of the Court, subject to determination of the CRA's entitlement thereto. The CRA may proceed to assert any and all legal or equitable remedies provided by law.

SECTION 21. COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

SECTION 22. HEADINGS. All sections and descriptive headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

SECTION 23. TIME. Time is of the essence of this Agreement.

SECTION 24. SEVERABILITY. If any provision, term, or clause of this Agreement is determined to be invalid or unenforceable by a Court of competent jurisdiction, said determination shall not, in any way, effect the obligation of the parties as provided for or referred to herein and, to that end, the provisions of this Agreement shall be deemed severable. However, such invalidity or unenforceability shall preclude the continuing effect of this Agreement if a failure of consideration were to occur.

SECTION 25. ENTIRE AGREEMENT.

A. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified or amended except by written instrument equal in dignity herewith and executed by the parties to be bound thereby.

B. No waiver or consent to any departure from any term, condition, or provision of this Agreement shall be effective or binding upon any party hereto unless such waiver or consent is in writing and signed by an authorized officer of the party giving the same and delivered to the other party.

C. The COMPANY agrees that no representations have been made by the CRA in order to induce the COMPANY to enter into this Agreement other than as expressly stated in this Agreement.

(End of Agreement - Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have made and executed
this Agreement for the purposes stated herein.

ATTEST:

LOWES HOME CENTERS, INC.

Secretary

By: _____
President

[CORPORATE SEAL]

Date: _____

US 17-92 COMMUNITY
REDEVELOPMENT AGENCY

Witness

By: _____

Print Name

Title: _____

Witness

Printed Name: _____

Print Name

Date: _____



AEC:jjr
11/7/07

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**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

To: John G. Metsopoulos, Program Manager II
Economic Development

Cc: William McDermott, Director
Economic Development

From: Ann E. Colby, Assistant County Attorney
Ext. 7254

Date: November 8, 2007

Subject: CRA Agreement with Lowe's Home Centers, Inc.

Attached is the US 17-92 CRA Redevelopment Grant Agreement with Lowes Home Center (Fern Park). The Agreement has been formatted to conform with other agreements prepared by this office. There were two small language changes: (i) Lowe's Home Center – Fern Park was added to the title; and (ii) the "whereas" clause on page 3 that begins "WHEREAS, on January 23, 2007, . . . to the COMPANY to assist the COMPANY in the construction of the Project **by providing for enhanced landscaping and site improvement;** and". Additionally, the signature page was revised so that the CRA and Lowe's will sign the Agreement, not the Board of County Commissioners.

Exhibit B, Fern Park Public Purpose Investments, is attached to the Agreement. Please attach Exhibit A to the Agreement prior to execution.

Please give me a call if you have any questions or changes. Once the Agreement has been signed by all parties, please provide a copy for our files.

AEC:jjr
Attachment:
Agreement



Fern Park Public Purpose Investments



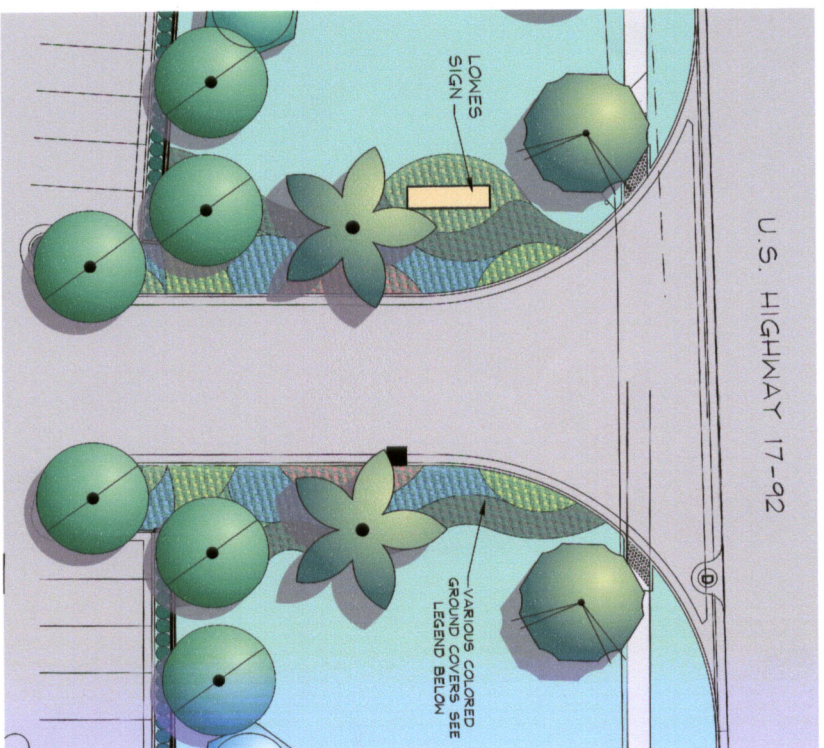
- ☐ As part of the CRA Agreement, Lowe's will commit to off-site improvements, remediation investment and landscaping upgrades totaling more than \$600,000.
- ☐ These include:
 - US17-92 Traffic Signalization \$280,000
 - Turn lane on access road & asphaltic overlay \$75,000
 - Demolition and removal of Asbestos tile: \$55,000
 - Removal of 6" Asbestos Cement Pipe: \$20,000
 - Install 2,500 lf of county owned 8" PVC: \$100,000
 - Phase II remediation requirements (related to oil contamination) \$50,000
 - Fire hydrant replacement: \$7,500
 - Landscaping Upgrades (see attached): \$30,000

Total:

\$617,500

Exhibit B

gph

[illegible]